

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 20860 of 2006****For Approval and Signature:****HONOURABLE MR.JUSTICE D.H.WAGHELA**

Sd/-

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
? **1 to 5 NO**

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HON.SECRETARY - Petitioner(s)**Versus****HASMUKHBHAI NANCHAND SHAH & 2 - Respondent(s)**

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Appearance :

MR KH BAXI for Petitioner(s) : 1,
MR GK RATHOD for Respondent(s) : 1,
MR MUKESH H RATHOD for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA**Date : 16/04/2007****ORAL JUDGMENT :**

1. Petitioner has approached this court
under Articles 226 and 227 of the Constitution to
challenge the order dated 11.8.2005 of the

Controlling Authority under the Payment of Gratuity Act, 1972 (for short, "the Act") and the order made in appeal preferred therefrom. The petitioner is stated to be a "Trust" registered under the Bombay Public Trusts Act, 1950 which was running charitable activities on "no profit no loss" basis and had employed the respondent as part-time medical officer since 2.1.1985. The respondent had resigned from that service on 20.4.2004. Upon his filing an application for payment of gratuity under the Act, the petitioner raised the dispute that the respondent was appointed on honorary basis and he was otherwise carrying on his private practice at his own clinic. It was also contended before the Controlling Authority that the petitioner Trust did not employ more than ten employees on regular basis. The main issue agitated by the petitioner appears to have been that the respondent was not an "employee" within the meaning and definition of the Act. Negating all those contentions, the Authority held that there was no evidence to substantiate the plea that ten or more employees were not employed by the petitioner and, in view of continuous service of more than 19 years, there was no reason to hold that the petitioner was not an "employee" just because he was a doctor. The decision of this court in Special Civil Application No.878 of 2005 was

distinguished on the basis that the anaesthetist in that case was called for service on "as and when required" basis, whereas the respondent herein was in continuous service. Thus, the application of the respondent was allowed and the petitioner was ordered to pay Rs.38,365/- by way of gratuity with 10% interest with effect from 1.5.2004.

2. The aforesaid order was carried in appeal and the Appellate Authority found no reason to interfere with that order.

3. Therefore, reiterating the same contentions, learned counsel for the petitioner vehemently argued that the petitioner was required to be held to be outside the definition of an "employee" as given in clause (e) of section 2 of the Act. Learned counsel also pleaded for an order of remand so as to afford to the petitioner an opportunity of proving that the petitioner had, at the relevant time, not employed more than ten employees in their establishment. As against that, learned counsel Mr.M.H.Rathod, appearing for the respondent, relied upon the oral order dated 18.6.1986 of this court (coram: P.R.Gokulakrishnan, C.J. and R.A.Mehta, J.) in Special Civil Application

No.3063 of 1986 wherein Labour Court, Rajkot, after considering the objection to the effect that the respondent was not a "workman" and that honorarium paid did not come under the definition of "wages", had come to the conclusion that respondent was a doctor coming under the definition of "workman" and that honorarium paid to him would be squarely covered by the definition of "wages". It was held by the court that the doctor who was doing part-time job for more than 18 years could easily be considered to be a "workman" coming under the definition of "workman" under the Industrial Disputes Act and the honorarium paid would squarely come under the definition of "wages" under section 2 (rr) of the Industrial Disputes Act.

4. In view of the above facts and submissions, no ground is made out to take a different view about applicability of the provisions of the Payment of Gratuity Act in the facts of the present case, particularly in exercise of the extraordinary writ jurisdiction of this court and after adjudication of the dispute by the statutory authorities. Whether the respondent was an "employee" within the definition as given in the Act is essentially a mixed question of fact and law. Even assuming

that the respondent was employed on part-time basis under the petitioner and that he was otherwise carrying on his medical practice, there is nothing in the definition to indicate that such employee would not be covered by the definition. As seen earlier, the Division Bench of this court has taken the broad view that a doctor doing part-time job could easily be considered a "workman" for the purpose of the Industrial Disputes Act and that analogy could aptly be applied for applying the provisions of the Payment of Gratuity Act.

5. Therefore, in short, the petition is required to be dismissed and, accordingly, it is dismissed as devoid of any substance. Rule is discharged and interim relief is vacated with no order as to costs.

Sd/-

(D.H.Waghela, J.)

(KMG Thilake)